

Attachment No. PC 10

Comments and Responses

**RESPONSE TO
COMMENTS**

**MARINER'S POINTE
PROJECT**



prepared for:

**CITY OF NEWPORT
BEACH**

Contact:
Jaime Murillo
Associate Planner

prepared by:

**THE PLANNING
CENTER | DC&E**

Contact:
JoAnn C. Hadfield
Director, Environmental
Services

JUNE 2011

**RESPONSE TO
COMMENTS**

**MARINER'S POINTE
PROJECT**



prepared for:

**CITY OF NEWPORT
BEACH**

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CNB-11.0E

JUNE 2011

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1. Introduction

1.1 PROJECT SUMMARY

The project applicant proposes to construct a two-story building that would provide 23,015 square feet of high end retail and restaurants in addition to office uses on an approximately 0.76-acre site in the City of Newport Beach. A new three-story parking structure would provide up to 136 parking spaces with valet service. The proposed use is consistent with the General Plan designation of General Commercial (CG) for the project site. However, development of the proposed project would require a General Plan Amendment to allow for the floor area ratio (FAR; building floor area divided by land area) to be increased. As described in this Response to Comments document, minor modifications to the project description have been proposed subsequent to public circulation of the Initial Study/Mitigated Negative Declaration (IS/MND) and are disclosed in this document.

The project site is in the northwest corner of the intersection of Dover Drive and West Coast Highway in the City of Newport Beach, Orange County, California. The project site is surrounded by single- and multifamily residences to the north and south. Single-family homes abut the project site to the north, and single- and multifamily land uses are south of the project site across West Coast Highway. One-story commercial buildings are adjacent to the west of the project site. East of the project site is Newport Bay and undeveloped open space to the northeast.

1.2 PURPOSE OF DOCUMENT

As lead agency for the project, the City of Newport Beach has prepared and circulated an IS/MND for the Mariner's Pointe project. The IS/MND was forwarded to the State Clearinghouse on April 11, 2011, for distribution to responsible and trustee agencies for a 30-day public review period. Notice was sent to the Orange County Clerks Office for posting and also mailed to owners and occupants of the surrounding area in addition to other stakeholders. The posted and mailed notices indicated that the 30-day review period would begin on April 11, 2011, and end on May 11, 2011. However, because the Orange County Clerk's Office did not post the notice until April 12, 2011, comment letters were accepted through at least May 12, 2011.

In accordance with the California Environmental Quality Act (CEQA), Section 15074(b):

"Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process....."

Although not required by CEQA, this document includes a formal response to comments received on the IS/MND.

This document also provides a description of modifications to the project proposed by the applicant subsequent to public circulation of the IS/MND. To assure that none of the proposed changes would result in environmental impacts that would warrant recirculation of the IS/MND, an analysis of the potential impacts resulting from the project modifications is provided.



1. Introduction

1.3 ORGANIZATION OF DOCUMENT

This Response to Comments document has been organized as follows:

Section 1. Introduction. This section provides a brief summary of the project and the CEQA process to-date. It also describes the purpose, contents and organization of this document.

Section 2. Proposed Modifications to the Project. This section provides a brief narrative and exhibit to describe the proposed changes to the project subsequent to public circulation of the IS/MND and includes a topic-by-topic review of potential environmental impacts associated with those changes.

Section 3. Response to Comments. This section includes a copy of each comment letter received on the IS/MND and a response to each comment.

2. *Proposed Project Modifications*

2.1 **PROJECT MODIFICATIONS**

This section outlines changes to the project as proposed in the IS/MND submitted for public review. Proposed modifications include:

- A partial roof over the parking structure. The applicant is proposing this improvement to further minimize potential aesthetic and noise impacts per the concern of neighboring residents. These impacts, however, determined to be less than significant in the IS/MND would remain less than significant with or without this improvement.
- Height reduction in cupola and tower features. The original project includes these features at a maximum height of 44 feet. Based upon City staff review of the application, it was determined that the appropriate findings to approve a Modification Permit to exceed the allowed 40 foot height could not be made. Therefore, the applicant has agreed to reduce the height of these elements to a maximum 40 feet and withdrew their request for a Modification Permit.

Figure 1, *Upper Roof Plan*, shows the proposed partial enclosure of the rooftop parking level as submitted by the project applicant. The partial enclosure would cover approximately the rear two-thirds portion of the rooftop parking level and would be setback 37.5 feet from the face of the parking structure. As shown in Figure 2, the top of the rooftop enclosure would be approximately 35 feet in height.

Figure 2, *Revised South Elevation*, has been updated to reflect the parking structure roof and the lowered maximum height of the cupola and tower elements from 44 feet to 40 feet.



2.2 **ENVIRONMENTAL ANALYSIS**

This section has been prepared to review the potential environmental impacts associated with the proposed project modifications and to substantiate that the changes do not warrant recirculation of the IS/MND. According to CEQA Guidelines Section 15073.5, *Recirculations of a Negative Declaration Prior to Adoption*, a lead agency must recirculate a negative declaration when the document must be substantially revised after public notice of its availability, but prior to its adoption. In accordance with Section 15073.5(b):

(b) A “substantial revisions” of the negative declaration shall mean:

- (1) A new, avoidable significant effect is identified and mitigation measures or project revisions must be added in order to reduce the effect to insignificance, or,
- (2) The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effect to less than significance and new measures or revisions must be required.

In accordance with Section 15073.5(c), recirculation is not required under the following circumstances:

- (1) Mitigation measures are replaced with equal or more effective measures pursuant to Section 15074.1.

2. Proposed Project Modifications

- (2) New project revisions are added in response to written or verbal comments on the project's effects identified in the proposed negative declaration which are not new avoidable significant effects.*
- (3) Measures or conditions of project approval are added after circulation of the negative declaration which are not required by CEQA, which do not create new significant environmental effects and are not necessary to mitigate an avoidable significant effect.*
- (4) New information is added to the negative declaration which merely clarifies, amplifies, or makes insignificant modifications to the negative declaration.*

The new changes to the project as proposed in the IS/MND meet CEQA Guidelines Sections 15073.5(c)(2) and 15073.5(c)(3). Inclusion of the rooftop parking level enclosure was in response to concerns of the surrounding residents regarding potential lighting and noise impacts from operation of the proposed parking structure. As discussed in Sections 3.3 and 3.12 of the IS/MND, lighting and noise impacts were determined to be less than significant. Therefore, the rooftop enclosure and lowering of the cupola and tower are not required by CEQA. Furthermore, as described below, the proposed project changes would not result in new avoidable significant effects on the environment.

Aesthetics

Project modifications would be limited to the partial rooftop parking level enclosure and lowering of the cupola and tower elements. As shown in Figure 2, the rooftop addition would not result in major changes to the aesthetics of the proposed parking structure. The height of the parking structure would be increased in comparison to the previous plan, but it would not exceed the height of the commercial building. The change would not alter the view from Dover Drive, and the view of the roof over the parking structure to the south would be limited due to the 37.5-foot roof setback. The height reduction of the cupola and tower would reduce potential view impacts. Therefore, no new significant impacts on a scenic vista or scenic resources would occur. The overall project design including the rooftop enclosure would still be subject to review by the City's Planning Commission and City Council. Additionally, the partial rooftop enclosure would eliminate some of the rooftop lighting fixtures and would further minimize any light and glare from the rooftop parking level. Therefore, no new significant aesthetic impacts would occur and no new or additional mitigation measures are required.

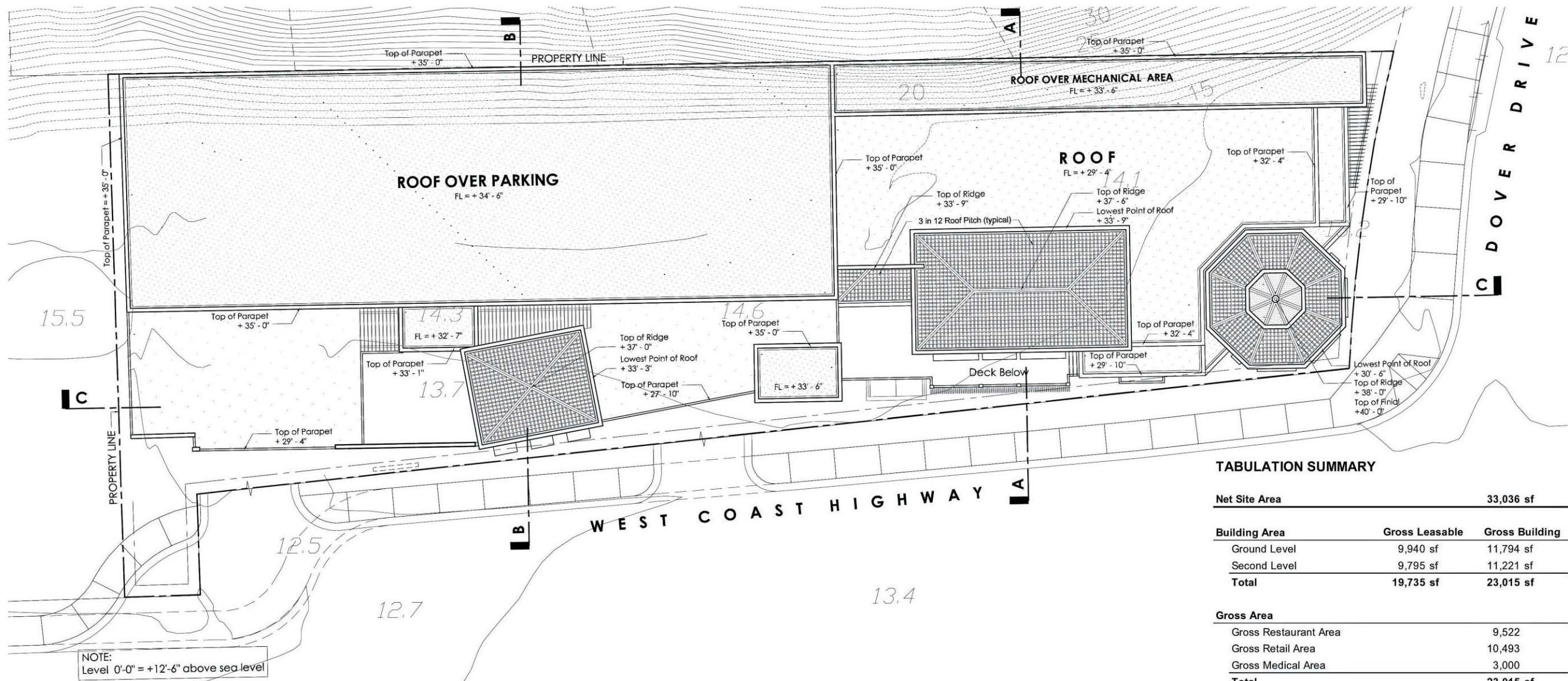
Agricultural and Forest Resources

Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the remainder of the project would be the same compared to the project as proposed in the IS/MND. Therefore, no new significant impacts to agricultural and forest resources would occur and no new or additional mitigation measures are required.

Air Quality

Inclusion of the partial rooftop parking level enclosure and lowering of the cupola and tower elements would not result in use of additional heavy construction equipment or additional construction or operation phase vehicle trips generated compared to the project as proposed in the IS/MND that would affect daily emissions. A nominal increase in material delivery and construction time would not result in insignificant construction- or operation-related air quality impacts. No new or additional mitigation measures are required.

Upper Roof Plan



TABULATION SUMMARY

Net Site Area		33,036 sf				
Building Area		Gross Leasable	Gross Building			
Ground Level		9,940 sf	11,794 sf			
Second Level		9,795 sf	11,221 sf			
Total		19,735 sf	23,015 sf			
Gross Area						
Gross Restaurant Area		9,522				
Gross Retail Area		10,493				
Gross Medical Area		3,000				
Total		23,015 sf				
Parking Provided On-Site						
Level		HC	Standard	Tandem	Valet	Total
		Stalls	Stalls	Stalls	Only	
Ground Level	P1	2	33	0	0	35
Second Level	P2	1	24	16	5	46
Third Level	P3	2	18	30	5	55
Total		5	75	46	10	136



Location Map Not to Scale



Source: Stoutenborough Architects and Planners 2011

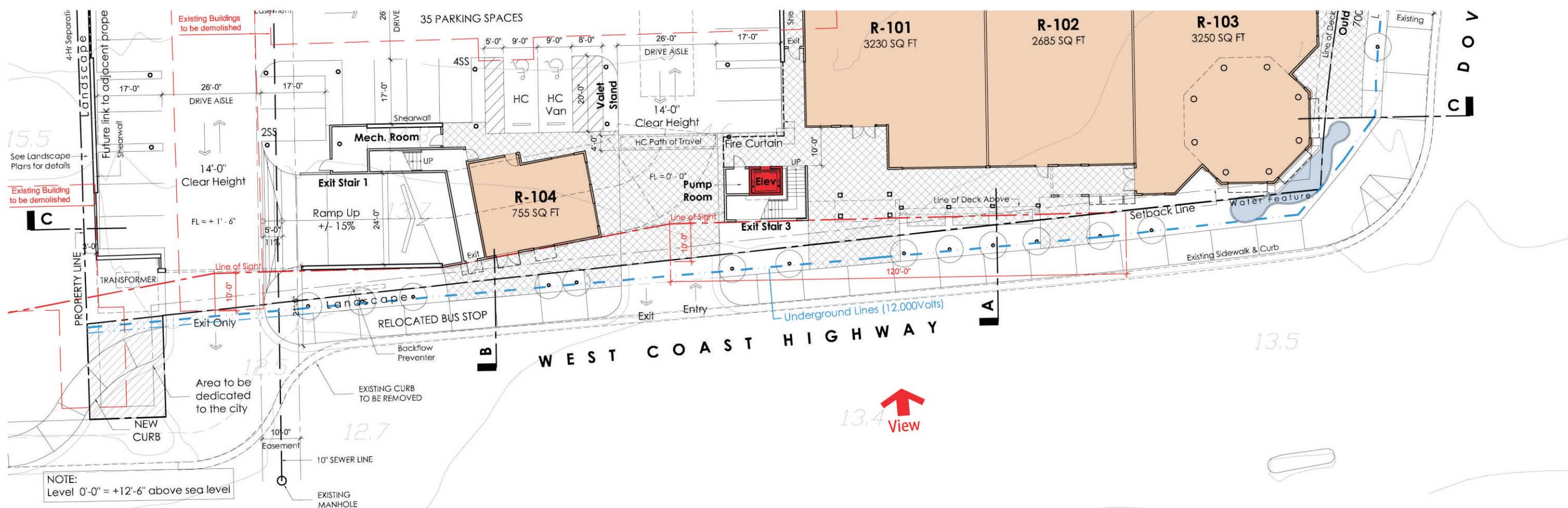
2. Proposed Project Modifications

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Revised South Building Elevation



South Elevation - West Coast Highway



Partial Ground Level Plan on Site

Source: Stoutenborough Architects and Planners 2011

Mariner's Pointe Project Response to Comments

2. Proposed Project Modifications

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2. Proposed Project Modifications

Biological Resources

Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the remainder of the project in regards to both construction and operation would be the same compared to the project as evaluated in the IS/MND. The site disturbance area and proposed landscaping plan would not be modified. No new significant impacts to biological resources would occur and no new or additional mitigation measures are required.

Cultural Resources

Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the remainder of the project in regards to both construction and operation would be the same compared to the project as evaluated in the IS/MND. The site disturbance area and ultimate footprint of the project would be the same. No new significant impacts to cultural resources would occur and no new or additional mitigation measures are required.

Geology and Soils

The partial rooftop parking level enclosure would be designed and built to comply with the seismic design criteria contained in the California Building Code as with the rest of the proposed parking structure and commercial building. In addition, the proposed development would still be subject to Mitigation Measure 5, which would require the project to be designed and built to comply with the recommendations of the project geotechnical report(s). No new significant geological impacts would occur and no new or additional mitigation measures are required.

Greenhouse Gas Emissions

As with Air Quality, inclusion of the partial rooftop parking level enclosure and lowering of the cupola and tower elements would not result in use of additional heavy construction equipment or additional construction or operational phase vehicle trips in comparison to the project as evaluated in the IS/MND. Any GHG emissions related to these changes would be negligible and no new significant GHG impacts would occur and no new or additional mitigation measures are required.

Hazards and Hazardous Materials

Addition of the partial rooftop parking level enclosure would not change the commercial/retail nature or operation of the proposed project. The remainder of the project would remain unchanged to the project as proposed in the IS/MND. Therefore, no new significant hazard impacts would occur and no new or additional mitigation measures are required.

Hydrology and Water Quality

Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the remainder of the project in regards to both construction and operation would be the same compared to the project as evaluated in the IS/MND. In addition, the parking enclosure may reduce the amount of oil and grease from motor vehicles in the project's stormwater runoff as vehicles and the area underneath would be better protected from rain. Therefore, proposed project modifications are anticipated to result in beneficial impacts to water quality. No new significant impacts to hydrology and water quality would occur and no new or additional mitigation measures are required.



2. Proposed Project Modifications

Land Use and Planning

Land use and planning impacts were determined to be less than significant in Section 3.10 of the IS/MND. Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the design of the remainder of the project would be the same compared to the project as evaluated in the IS/MND. The partial rooftop parking level enclosure has been designed in coordination with City staff to ensure compliance with City's design standards. Furthermore, lowering of the cupola feature from 44 feet to 40 feet would eliminate the need for a Modification Permit. Therefore, no new significant land use and planning impacts would occur and no new or additional mitigation measures are required.

Mineral Resources

Addition of the partial rooftop parking level enclosure would not change the location of the proposed project. The remainder of the project would be the same compared to the project as proposed in the IS/MND. Therefore, no new significant impacts to mineral resources would occur and no new or additional mitigation measures are required.

Noise

Construction noise and vibration impacts in addition to operation-related noise impacts were determined to be less than significant in Section 3.12 of the IS/MND. The addition of the partial rooftop parking level enclosure would not introduce any new construction noise or vibration impacts different from the project as proposed in the IS/MND. The rooftop enclosure would not result in additional vehicle trip generation relative to the project as evaluated in the IS/MND. The partial rooftop parking level enclosure is anticipated to further minimize noise impacts, and therefore result in a beneficial impact. No new significant noise impacts would occur and no new or additional mitigation measures are required.

Population and Housing

Aside from the addition of the partial rooftop parking level enclosure and lowering of the cupola and tower elements, the remainder of the project would be the same compared to the project as evaluated in the IS/MND. No new significant impacts to population and housing would occur and no new or additional mitigation measures are required.

Public Services

Addition of the partial rooftop parking level enclosure would not increase the need for additional fire or police services compared to the project as proposed. The remainder of the project would be the same compared to the project as evaluated in the IS/MND. No new significant impacts to public services would occur and no new or additional mitigation measures are required.

Recreation

Addition of the partial rooftop parking level enclosure would not change the nature of the project and the remainder of the project would be the same compared to the project as evaluated in the IS/MND. No new significant impacts to recreational facilities would occur and no new or additional mitigation measures are required.

2. Proposed Project Modifications

Transportation and Traffic

Addition of the partial rooftop parking level enclosure would not result in additional vehicle trip generation compared to the project as evaluated in the IS/MND. The partial rooftop parking level enclosure has been designed in coordination with City staff to ensure compliance with the City's design standards. Therefore, no new significant traffic impacts would occur and no new or additional mitigation measures are required.

Utilities and Service Systems

Addition of the partial rooftop parking level enclosure would not result in additional water demand or generation of solid waste. Therefore, no new significant impacts to utilities and service systems would occur and no new or additional mitigation measures are required.



2. Proposed Project Modifications

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3. Response to Comments

This section provides written responses received on the Initial Study prepared for the Mariner's Pointe Project and the City's responses to each comment. Comment letters and specific comments are given letters and numbers for reference purposes. Where sections of the Initial Study are excerpted in this document, the sections are shown indented. Changes to the Initial Study text are shown in **bold and double underline** for additions and ~~strikeout~~ for deletions.

The following is a list of agencies and persons that submitted comments on the Initial Study during the public review period.

<i>Number Reference</i>	<i>Commenting Person/Agency</i>	<i>Date of Comment</i>	<i>Page No.</i>
A1	Orange County Sanitation District	April 15, 2011	3-3
A2	California Department of Toxic Substances Control	May 6, 2011	3-7
A3	California Department of Transportation	May 10, 2011	3-13
A4	State Clearinghouse and Planning Unit	May 16, 2011	3-17
A5	Orange County Transportation Authority	May 11, 2011	3-21
O1	California Cultural Resource Preservation Alliance	April 26, 2011	3-25
R1	Neighborhood Letter	May 3, 2011	3-29
R2	Cameron Merae	May 9, 2011	3-35
R3	Jack M. Langson	May 9, 2011	3-39
R4	Mike Hilford	May 10, 2011	3-43
R5	William R. Steel (on behalf of Laura Tarbox)	May 11, 2011	3-47

A: Agency
O: Organization
R: Resident






3. Response to Comments

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3. Response to Comments

LETTER A1 – Orange County Sanitation District (2 pages)

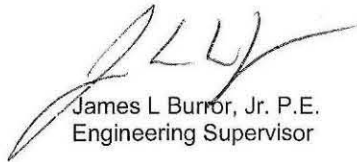
 Serving Anaheim Brea Buena Park Cypress Fountain Valley Fullerton Garden Grove Huntington Beach Irvine La Habra La Palma Los Alamitos Newport Beach Orange Placentia Santa Ana Seal Beach Stanton Tustin Villa Park Yorba Linda Costa Mesa Sanitary District Midway City Sanitary District Irvine Ranch Water District County of Orange	 ORANGE COUNTY SANITATION DISTRICT We protect public health and the environment by providing effective wastewater collection, treatment, and recycling.	RECEIVED BY PLANNING DEPARTMENT APR 21 2011 CITY OF NEWPORT BEACH	
	April 15, 2011	Jamie Murillo, Associate Planner City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92658	
		SUBJECT: Notice of Intent to Adopt Mitigated Declaration for Mariner's Pointe Project City of Newport Beach	
		This letter is in response to the above referenced Notice of Intent to Adopt Mitigated Declaration for Mariner's Pointe Project City of Newport Beach (NOI), for a project within the City of Newport Beach (City). The project site is located near the intersection of Dover and West Coast Highway, within the City.	A1-1
		The proposed project involves the construction of 50,274 square feet of commercial/retail space with a parking structure. The project site is within the jurisdiction of the Orange County Sanitation District (OCSD). The density of development is higher than current OCSD planning projections.	
		OCSD records show that this area has a sewer system that eventually connects to an OCSD sewer in West Coast Highway, near the project site. This is a 30-inch sewer that will collect the project's sanitary sewer flows. Please indicate if the project will require any modifications to city sewers, or provide corrected information about our records on the city sewers. This could be done by a figure to display how wastewater will be routed to the OCSD system. It should also be noted that OCSD anticipates the lower two floors of the parking structure may need to be connected to the sanitary sewer system. OCSD has a fee structure for these types of facilities and they should be included in the sanitary sewer flow analysis.	A1-2
		Also, please note that any construction dewatering operations that involve discharges to the local or regional sanitary sewer system must be permitted by OCSD prior to discharges. OCSD staff will need to review/approve the water quality of any discharges and the measures necessary to eliminate materials like sands, silts, and other regulated compounds prior to discharge to the sanitary sewer system.	A1-3
	10844 Ellis Avenue • Fountain Valley, CA 92708-7018 • (714) 962-2411 • www.ocsd.com		

3. Response to Comments



Jamie Murillo
Page 2
April 15, 2011

Thank you for the opportunity to comment on the proposed development. If you have any questions regarding sewer connection fees, please contact Wendy Smith at (714) 593-7880. For planning issues regarding this project, please contact me at (714) 593-7335.



James L. Burror, Jr. P.E.
Engineering Supervisor

JB:sa
EDMS:003935156/1.12a

3. Response to Comments

A1 Response to Comments from James L Burror, Engineering Supervisor, Orange County Sanitation District, dated April 15, 2011.

- A1-1 The project applicant will coordinate with the Orange County Sanitation District (OCSD) to verify to verify adequate sewer capacity for the project prior to issuance of grading permits.
- A1-2 The project site has three existing 6-inch sewer laterals that feed into the existing 8-inch main in West Coast Highway. This existing 8-inch main flows into a manhole located on the western end of the project site that feeds into the 30-inch main that runs along West Coast Highway. Commenter is correct in noting that the two lower floors of the parking structure would be connected to the sanitary sewer system. The project applicant will coordinate with Orange County Sanitation District in preparing the sewer flow analysis to include the calculation of applicable fees.
- A1-3 Comment acknowledged.





3. Response to Comments

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3. Response to Comments

LETTER A2 – California Department of Toxic Substances Control (4 pages)



Department of Toxic Substances Control

Linda S. Adams
Acting Secretary for
Environmental Protection

Leonard E. Robinson
Acting Director
5796 Corporate Avenue
Cypress, California 90630

Edmund G. Brown Jr.
Governor

CITY OF NEWPORT BEACH

RECEIVED BY
PLANNING DEPARTMENT
MAY 10 2011

May 6, 2011

Mr. Jaime Murillo, Associate Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658

NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION FOR THE
MARINER'S POINTE PROJECT, (SCH#2011041038), ORANGE COUNTY

Dear Mr. Murillo:

The Department of Toxic Substances Control (DTSC) has received your submitted draft Initial Study (IS) and a draft Mitigated Negative Declaration (MND) for the above-mentioned project. The following project description is stated in your document: "The project applicant proposes to construct a two-story commercial/retail building totaling 23,015 gross building square feet and a three-level parking structure totaling 50,274 gross building square feet on the 0.76-acre project site in the northwest quadrant of the intersection at Dover Drive and West Coast Highway. The development would include various commercial/retail uses such as restaurants, specialty retail and medical office. The project site is surrounded by single-family and multifamily residences to the north and south. One-story commercial buildings are adjacent to the west of the project site. East of the project site is Newport Bay and undeveloped open space to the northeast. The project site is located at the northwest corner of the intersection at Dover Drive and West Coast Highway in the City of Newport Beach. The project site consists of six legal lots. The site is currently enclosed by a chain-link fence and includes two vacant buildings on the western portion of the site and a paved surface parking lot".

Based on the review of the submitted document DTSC has the following comments:

- 1) The MND should evaluate whether conditions within the Project area may pose a threat to human health or the environment. Following are the databases of some of the regulatory agencies:

A2-1

3. Response to Comments

Mr. Jaime Murillo
May 6, 2011
Page 2

- | | |
|--|-----------------|
| <ul style="list-style-type: none">• National Priorities List (NPL): A list maintained by the United States Environmental Protection Agency (U.S.EPA).• Envirostor (formerly CalSites): A Database primarily used by the California Department of Toxic Substances Control, accessible through DTSC's website (see below).• Resource Conservation and Recovery Information System (RCRIS): A database of RCRA facilities that is maintained by U.S. EPA.• Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS): A database of CERCLA sites that is maintained by U.S.EPA.• Solid Waste Information System (SWIS): A database provided by the California Integrated Waste Management Board which consists of both open as well as closed and inactive solid waste disposal facilities and transfer stations.• GeoTracker: A List that is maintained by Regional Water Quality Control Boards.• Local Counties and Cities maintain lists for hazardous substances cleanup sites and leaking underground storage tanks.• The United States Army Corps of Engineers, 911 Wilshire Boulevard, Los Angeles, California, 90017, (213) 452-3908, maintains a list of Formerly Used Defense Sites (FUDS). | A2-1
cont'd. |
| <p>2) The MND should identify the mechanism to initiate any required investigation and/or remediation for any site within the proposed Project area that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement in order to review such documents.</p> | A2-2 |
| <p>3) Any environmental investigations, sampling and/or remediation for a site should be conducted under a Workplan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment Investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be</p> | A2-3 |

3. Response to Comments

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clearly summarized in a table. All closure, certification or remediation approval reports by regulatory agencies should be included in the MND.

A2-3
cont'd.

- 4) If buildings, other structures, asphalt or concrete-paved surface areas are being planned to be demolished, an investigation should also be conducted for the presence of other hazardous chemicals, mercury, and asbestos containing materials (ACMs). If other hazardous chemicals, lead-based paints (LPB) or products, mercury or ACMs are identified, proper precautions should be taken during demolition activities. Additionally, the contaminants should be remediated in compliance with California environmental regulations and policies.

A2-4

- 5) Future project construction may require soil excavation or filling in certain areas. Sampling may be required. If soil is contaminated, it must be properly disposed and not simply placed in another location onsite. Land Disposal Restrictions (LDRs) may be applicable to such soils. Also, if the project proposes to import soil to backfill the areas excavated, sampling should be conducted to ensure that the imported soil is free of contamination.

A2-5

- 6) Human health and the environment of sensitive receptors should be protected during any construction or demolition activities. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there are, have been, or will be, any releases of hazardous materials that may pose a risk to human health or the environment.

A2-6

- 7) If the site was used for agricultural, livestock or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted under the oversight of and approved by a government agency at the site prior to construction of the project.

A2-7

- 8) If it is determined that hazardous wastes are, or will be, generated by the proposed operations, the wastes must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). If it is determined that hazardous wastes will be generated, the facility should also obtain a United States Environmental Protection Agency Identification Number by contacting (800) 618-6942. Certain hazardous waste treatment processes or hazardous materials, handling, storage or uses may require authorization from the local Certified Unified Program Agency (CUPA). Information about the requirement for authorization can be obtained by contacting your local CUPA.

A2-8



3. Response to Comments

Mr. Jaime Murillo
May 6, 2011
Page 4

- 9) DTSC can provide cleanup oversight through an Environmental Oversight Agreement (EOA) for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement (VCA) for private parties. For additional information on the EOA or VCA, please see www.dtsc.ca.gov/SiteCleanup/Brownfields, or contact Ms. Maryam Tasnif-Abbasi, DTSC's Voluntary Cleanup Coordinator, at (714) 484-5489.
- 10) Also, in future CEQA document, please provide your e-mail address, so DTSC can send you the comments both electronically and by mail.

A2-9

A2-10

If you have any questions regarding this letter, please contact Rafiq Ahmed, Project Manager, at rahmed@dtsc.ca.gov, or by phone at (714) 484-5491.

Sincerely,



Greg Holmes
Unit Chief
Brownfields and Environmental Restoration Program

cc: Governor's Office of Planning and Research
State Clearinghouse
P.O. Box 3044
Sacramento, California 95812-3044
state.clearinghouse@opr.ca.gov.

CEQA Tracking Center
Department of Toxic Substances Control
Office of Environmental Planning and Analysis
P.O. Box 806
Sacramento, California 95812
ADelacr1@dtsc.ca.gov

CEQA # 3195

3. Response to Comments

A2 Response to Comments from Greg Holmes, Unit Chief, Department of Toxic Substances Control, dated May 6, 2011.

- A2-1 Potential project impacts related to hazards and hazardous materials were analyzed in Section 3.8, *Hazards and Hazardous Materials*, of the IS/MND. This section was based on the Phase I report (a copy is available with the City for viewing) prepared for the proposed project which utilized the databases listed by the commenter, such as Geotracker, RCRIS, and CERCLIS.
- A2-2 The Phase I report identified a former Arco service station onsite. However, the former use is considered a historical recognized environmental condition (HREC) because records indicate the underground storage tanks have been removed and the case was closed on May 11, 1998. Therefore, the Phase I report does not recommend any further action.
- A2-3 See response A2-2. The Phase I report does not recommend any further action.
- A2-4 The proposed project would result in demolition of the existing buildings onsite. As discussed in Section 3.8(b) of the IS/MND, the Phase I report prepared for the project identified the presence of asbestos-containing material (ACM) in the existing buildings. Removal of ACM would be conducted in accordance with SCAQMD Rule 1403. The existing buildings were also observed to contain lead-based paint (LBP). However, the suspected LBP is considered to be a *de minimis* environmental condition and no further action is recommended.
- A2-5 See response A2-2. If contaminated soil were encountered during grading and construction activities, the soil would be profiled and shipped to an appropriate permitted disposal facility. Should the need for imported soil arise, care would be taken to ensure that the soil is not contaminated with hazardous substances.
- A2-6 See response A2-4. Removal of ACM would be conducted to comply with SCAQMD Rule 1403, which would minimize any potential health impacts. Suspected LBP is considered to be a *de minimis* environmental condition and no further action is recommended. Furthermore, as discussed in Section 3.9(a), *Hydrology and Water Quality*, of the IS/MND, best management practices as required under the federal Clean Water Act would be implemented to eliminate sediment and construction debris runoff into area storm drains during the construction period.
- A2-7 The project site has not been used for agricultural, livestock, or related activities. There are no agricultural resources on the site, and the site is not listed on any of the State Farmland maps. Therefore, it is not anticipated that the soil or groundwater would contain pesticides, agricultural, chemical, organic waste, or other related residue.
- A2-8 As the project would consist of restaurants, office, and retail use, long-term operations of the proposed project would not involve routine transport, storage, use, and disposal of substantial amounts of hazardous materials.
- A2-9 Comment acknowledged.
- A2-10 Comment acknowledged.




3. Response to Comments

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3. Response to Comments

LETTER A3 – California Department of Transportation (1 page)

<small>STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY</small>		<small>ARNOLD SCHWARZENEGGER, Governor</small>
DEPARTMENT OF TRANSPORTATION District 12 3337 Michelson Drive, Suite 380 Irvine, CA 92612-8894 Tel: (949) 724-2267 Fax: (949) 724-2592		 <i>Flex your power! Be energy efficient!</i>
Post-It® Fax Note 7671	Date 5-10-11 # of Pages 1	
To Jaime Murillo	From D. DAVIS	
Co./Dept. Planning	Co. CALTRANS	
Phone	Phone # (9) 440-3487	
Fax # (9) 644-3229	Fax # (9) 756-4962	

May 10, 2011

Jaime Murillo
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

File: IGR/CEQA
SCH#: 2011041038
Log #: 2704
SR-1

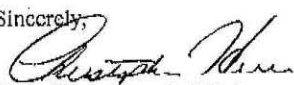
Subject: Mariner's Point Project

Dear Mr. Murillo

Thank you for the opportunity to review and comment on the **Mitigated Negative Declaration for the Mariner's Pointe Project**. The project proposes to demolish the existing building and construct the proposed two-story commercial/retail building and three-level parking lot. The gross square footage of the proposed project would be 23,015. The uses would consist 10,493 gross square feet of restaurants, 9,522 gross square feet of retail, and 3,000 gross square feet of medical/office. Additionally, the project would construct a three-level parking structure that would provide 136 valet and self parking stalls. The nearest State route to the project site is SR-1.


The California Department of Transportation (Department), District 12 is a commenting agency on this project and we have no comment at this time. However, in the event of any activity within the Department's right-of-way, an encroachment permit will be required.

Please continue to keep us informed of this project and any future developments, which could potentially impact State transportation facilities. If you have any questions or need to contact us, please do not hesitate to call Damon Davis at (949) 440-3487.

Sincerely,

Chris Horre, Branch Chief
Local Development/Intergovernmental Review

C: Terry Roberts, Office of Planning and Research

"Caltrans improves mobility across California"


A3-1

3. Response to Comments

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3. Response to Comments

A3 Response to Comments from Chris Herre, Branch Chief, Caltrans, dated May 10, 2011.

A3-1 Comment acknowledged. The proposed water feature would encroach upon Caltrans right-of-way along West Coast Highway. The project applicant will coordinate with Caltrans to obtain an encroachment permit.






3. Response to Comments

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3. Response to Comments

LETTER A4 – State Clearinghouse (1 page)

 JERRY BROWN GOVERNOR	<p>STATE OF CALIFORNIA GOVERNOR'S OFFICE of PLANNING AND RESEARCH STATE CLEARINGHOUSE AND PLANNING UNIT</p> <p>RECEIVED BY PLANNING DEPARTMENT</p> <p>MAY 16 2011</p> <p>CITY OF NEWPORT BEACH</p> <p>Jaime Murillo City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92663</p> <p>Subject: Mariner's Pointe Project SCH#: 2011041038</p> <p>Dear Jaime Murillo:</p> <p>The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on May 10, 2011, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.</p> <p>Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.</p> <p>Sincerely,  Scott Morgan Director, State Clearinghouse</p>	 A4-1
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1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
(916) 445-0613 FAX (916) 323-3018 www.opr.ca.gov

3. Response to Comments

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3. Response to Comments

A4 Response to Comments from Scott Morgan, Director, State Clearinghouse, dated May 16, 2011.

A4-1 Comment acknowledged.




3. Response to Comments

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3. Response to Comments

LETTER A5 – Orange County Transportation Authority (2 pages)

 BOARD OF DIRECTORS Patricia Bates Chair Paul Glaab Vice Chair Jerry Amanle Director Don Bankhead Director Peter Buffa Director Bill Campbell Director Carolyn Caveocha Director Larry Crandall Director William J. Dalton Director Don Hansen Director Peter Herzog Director John Moortach Director Shawn Nelson Director Janel Nguyen Director Miguel Pulido Director Tom Tail Director Greg Winterbottom Director Cindy Quon Governor's Ex-Officio Member CHIEF EXECUTIVE OFFICE Will Kempton Chief Executive Officer	<p>May 11, 2011</p> <p>Mr. Jaime Murillo Associate Planner City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92658</p> <p>Subject: Mitigated Negative Declaration for the Mariner's Pointe Project</p> <p>Dear Mr. Jaime Murillo:</p> <p>The Orange County Transportation Authority (OCTA) has reviewed the above referenced document. The following comments are provided for your consideration:</p> <ul style="list-style-type: none">• On Page 132, it is suggested that an existing bus stop would be relocated to an area slightly west of its current location on the north side of Pacific Coast Highway, west of Dover Drive. Please note that a 12' by 80' concrete bus pad should be placed adjacent to the proposed relocation area.• Place a shelter at the proposed bus stop boarding area. This will give passengers a centralized location in which to wait for the bus and would minimize any potential impacts to adjacent businesses if passengers were to use the building awnings during inclement weather.• The developer will need to work with OCTA staff to identify an alternate bus stop location to be used during the construction project.• Provide OCTA with a 14-day advance notice prior to the start of the project by calling the Detour Coordinator at (714) 265-4359 or Field Operations at (714) 265-4497. <p>If you have any questions or comments, please contact Carolyn Mamaradlo by phone at (714) 560-5748 or by email at cmamaradlo@octa.net.</p>	<p>RECEIVED BY PLANNING DEPARTMENT MAY 17 2011 CITY OF NEWPORT BEACH</p> <p>A5-1</p> <p>A5-2</p>
--	--	--

Orange County Transportation Authority
550 South Main Street / P.O. Box 14184 / Orange / California 92663-1584 / (714) 560-OCTA (6282)

3. Response to Comments



BOARD OF DIRECTORS

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Tom Tall
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Greg Winterbottom
Director

Cindy Quon
Governor's
Ex-Officio Member

CHIEF EXECUTIVE OFFICE

Will Kempton
Chief Executive Officer

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles Larwood', written over a horizontal line.

Charles Larwood
Manager, Transportation Planning
c: Bill Batory, OCTA

Orange County Transportation Authority
550 South Main Street / P.O. Box 14184 / Orange / California 92863-1584 / (714) 560-OCTA (6282)

3. Response to Comments

A5 Response to Comments from Charles Larwood, Manager, Transportation Planning, Orange County Transportation Authority, dated May 11, 2011.

A5-1 Comment acknowledged. Project applicant will coordinate with the Orange County Transportation Authority (OCTA) regarding the configuration of the relocated bus stop.

A5-2 Mitigation Measure No. 11 requires the applicant to contact and coordinate with OCTA to modify or relocate the Coast-Dover bus stop during construction activities. This mitigation also specifies that such plans as negotiated with OCTA shall be submitted to the City for review and approval prior to issuance of grading permits. In response to this comment, Mitigation Measure No. 11 is supplemented as follows:

11. The applicant shall contact OCTA and coordinate operation of the Coast-Dover bus stop along the project's West Coast Highway frontage during project construction. Mitigation as required to suspend operation, or modify or temporarily relocate the bus stop during project construction activities shall be negotiated with OCTA. The applicant shall provide the plans/mitigation to the City as negotiated with OCTA for review and approval by the City of Newport Beach's Planning Department and Public Works Department prior to issuance of grading permits. **The applicant shall provide OCTA with a minimum 14-day advance notice prior to the start of construction activities by contacting either the Detour Coordinator or Field Operations.**



3. Response to Comments

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3. Response to Comments

LETTER O1 – California Cultural Resources Preservation Alliance (1 page)



P.O. Box 54132
Irvine, CA 92619-4132

California Cultural Resource Preservation Alliance, Inc.

An alliance of American Indian and scientific communities working for
the preservation of archaeological sites and other cultural resources.

RECEIVED BY

PLANNING DEPARTMENT

April 26, 2011

APR 28 2011

Jaime Murillo, Associate Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

CITY OF NEWPORT BEACH

Dear Jaime Murillo,

Thank you for the opportunity to review the Mitigated Negative Declaration for the Mariner's Pointe Project. We agree that the proposed project has a high probability for the presence of prehistoric cultural deposits beneath the current modern ground surface and that they may be impacted by earthmoving and demolition activities. The mitigation measures appear to be appropriate, however we would like to see a requirement that if significant cultural deposits such as intact midden or features and especially human remains are located during Phase II studies, rather than going directly to Phase III data recovery mitigation, a determination will be made as to whether preservation in place is a feasible option. This may be feasible if the cultural deposits are within areas designated for parking or landscaping. Site burial beneath parking lots and open spaces is recommended in California Public Resources Code 21083.2 (b) (3) and (4). This can also save the developer money as Phase III data recovery mitigation is labor intensive and expensive.

O1-1



In addition, since the project involves a General Plan Amendment, SB 18 requires that prior to the adoption of an amendment of a city's general plan, the city conduct consultations with California Native American tribes.

O1-2

Finally, the City of Newport Beach is to be commended for their diligence in addressing environmental concerns, including cultural resources. If you have any questions, please contact me at (949) 559-6490, or p.martz@cox.net.

Sincerely,

Patricia Martz, Ph.D.
President

3. Response to Comments

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3. Response to Comments

O1. Response to Comments Patricia Martz, President, California Cultural Resource Preservation Alliance, dated April 26, 2011.

O1-1 Comment acknowledged. Per the commenter's suggestion, Mitigation Measure 4 has been revised to the following:

The project applicant shall have a qualified archaeologist conduct a Phase II archaeological investigation and a Phase III investigation if warranted. The Phase II investigation, including trenching and analysis of any resources found, shall be completed before issuance of a grading permit by the City of Newport Beach. A Phase II archaeological testing program consists of a control subsurface investigation designed to extract a small sample of the subsurface deposits, but a sample large enough to draw a conclusion on the significance of the site (assuming the site is present). If intact features of an archaeological site, such as hearths, living surfaces, or middens, are discovered in the course of the Phase II investigation, then the project applicant shall have the archaeologist conduct a Phase III investigation. A Phase III investigation, if required, shall be completed before issuance of a grading permit. A Phase III consists of extracting a larger sample of the site materials to document the function, age, and components of the site that would allow for interpretation and comparative analysis with respect to the larger area (e.g. occupation within the Newport Bay area).

- Conduct a feasibility investigation to preserve in place, any significant archaeological resource that is discovered. Feasibility can be based on but not limited to whether the significant archaeological resource is beneath open space that can incorporate preservation in place. If preservation in place is feasible, such preservation shall be documented with the City's Planning Division, and no further mitigation is necessary;
- If preservation in place is not feasible, the applicant's archaeologist shall conduct a Phase III investigation prior to the issuance of a grading permit. A Phase III consists of extracting a larger sample of the site materials to document the function, age, and components of the site, allowing for interpretation and comparative analysis with respect to the larger area (e.g., occupation within the Newport Bay area). The City's Planning Division shall approve the report and related actions prior to grading permit issuance.



O1-2 Pursuant to SB 18 requirements, on October 13, 2010, the City of Newport Beach submitted a written request to the Native American Heritage Commission (NAHC) requesting a list of whom to consult. On October 19, 2010, the City received the Native American Tribal Consultation list of tribes with traditional lands or cultural places within the project planning area from the NAHC. The City sent out letters on October 20, 2010 to each of the tribes on the list inviting each to consult and declare the importance of their tribe's participation in the planning process of an amendment to the City's General Plan as required by Government Code Section 65352. The City did not receive any responses or requests for consultation. The Tribes listed on the NAHC's consultation list were also included on the distribution list for the Notice of Intent for the IS/MND and will be provided Planning Commission and City Council public hearing notices.

3. Response to Comments

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3. Response to Comments

LETTER R1 – Neighborhood Resident Letter (4 pages)

<p>May 3, 2011</p> <p>City of Newport Beach 3300 Newport Boulevard Newport Beach, CA 92658</p> <p>Attention: Jaime Murillo, Associate Planner</p> <p>Subject: Mariner's Pointe Project City of Newport Beach</p>		<p>RECEIVED BY PLANNING DEPARTMENT MAY 10 2011</p> <p>CITY OF NEWPORT BEACH</p>
<p>Reference is made to your Notice of Intent to Adopt Mitigated Declaration for Mariner's Pointe Project, a copy of which is attached hereto. We note the City Staff has concluded that the project would not have a significant impact on the environment and therefore has recommended a negative declaration.</p> <p>However, we homeowners in Newport Beach, mainly on the ocean side of Kings Road, are strongly opposed to the project as presented. It is way overbuilt for the size of the property! The existing zoning, and the requirements therein, are presently fair to the homes on the rim and to the business properties below. As far as we can tell, all other businesses along the North side of the highway have complied. Why should there be an exception in this case?</p> <p>We are most concerned about the Parking Structure: massive size, way over the 31 foot height limit, parking on the roof, lights on the roof, noise from car doors shutting, horn sounds, etc. Of even more concern is the fact that the entrance and exit are close to the corner of Dover and PCH. There have been many accidents on this corner and in the vicinity thereof. The ingress and egress to the Parking Structure are in an area where three traffic lanes merge into two. Traffic going East on PCH would have to make a U-turn at the corner to enter the parking structure.</p> <p>Furthermore, if you accept these radical changes to the zoning requirements for this project, you probably will set an unwanted precedent. Also, we believe such massive structures will reduce the property values of homes directly above PCH. The property in question warrants a more reasonable development which complies with existing zoning and is more compatible with the neighborhood.</p>	<p>R1-1</p> <p>R1-2</p> <p>R1-3</p>	
<p>HOMEOWNERS</p> <p><i>Harry J. Gierling</i> <i>Nancy W. Gierling</i> <i> Evelyn Collins</i> <i>M.H. Hilford</i> <i>Pro. Lee</i> <i>Marvin A. Walker</i> <i>Helen Walker</i></p>	<p>ADDRESSES</p> <p><i>711 Kings Road</i> <i>421 Kings Road</i> <i>511 Kings Rd</i> <i>108 KINGS PLACE</i> <i>717 Kings Rd</i> <i>717 Kings Rd</i></p>	



3. Response to Comments

HOMEOWNERS	ADDRESSES
Frank Gerkut	811 Kings Rd.
Mary Reckert	811 Kings Rd
Carol Lanice Orr	403 Kings Rd.
Richard D. Orr	321 Kings Rd.
C.C. Orr	✓ ✓
Harry DeWald	303 KINGS RD
Carolyn K DeWald	✓ ✓
Cameron M. Orr	100 Kings Road.
Doug Hill	503 Kings Rd
Laura Jarboe, trustee	104 Kings Place

Notice of Intent to Adopt Mitigated Declaration for Mariner's Pointe Project City of Newport Beach

Notice is hereby given that the City of Newport Beach has completed a Mitigated Negative Declaration for the construction of a new commercial building at 100 - 300 West Coast Highway at the intersection of West Coast Highway and Dover Drive, Newport Beach, California. The 0.76 acre project site consists of two existing connected one-story buildings and a surface lot. The project applicant, Glenn Verdult, proposes to demolish the existing structures and pavement onsite and construct a two-story commercial structure of 23,015 gross building square feet and a three-story parking structure. The development would include various commercial/retail uses such as restaurants (10,493 sf), specialty retail (9,522 sf), and medical office (3,000 sf).

Development of the proposed project would require the following entitlements from the City of Newport Beach.

- **General Plan Amendment:** increase the allowable floor area to land area ratio (FAR) for the project site from 0.5 FAR to 0.68 FAR
- **Zoning Code Amendment:** change the specific floor area limitation for the project site on the Zoning Map from 0.3/0.5 FAR to 0.68 FAR
- **Site Development Review:** to allow the construction of a 23,015-square-foot, two-story building and a three-story parking structure that will exceed the 31-foot base height limit with a maximum height of 40 feet
- **Modification Permit:** to allow architectural feature (cupola and finial) to exceed the 40-foot maximum height limit (proposed height of 44 feet)
- **Conditional Use Permit:** to allow rooftop parking, to modify the off-street parking requirements, and to establish a parking management plan for the site
- **Variance:** to allow the building to encroach 5 feet into the 5-foot rear yard setback
- **Parcel Map:** to consolidate six lots into one parcel

On the basis of the Initial Study, City staff has concluded that the project would not have a significant impact on the environment and has therefore recommended preparation of a Mitigated Negative Declaration (MND). The MND reflects the independent judgment of City staff and recognizes project design features, previous environmental evaluations, and standard construction and engineering practices, requiring review and reevaluation of future projects as contributing to avoidance of potential impacts. The project site does not include any sites on an Environmental Protection Agency hazardous waste site list compiled pursuant to Government Code Section 65962.5.

The MND is available for a 30-day public review period beginning April 11, 2011 and ending May 11, 2011. Copies of the document are available for review at 3300 Newport Boulevard, Newport Beach, CA 92658 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. The document can also be accessed online at: <http://www.newportbeachca.gov/index.aspx?page=942>. Additionally, copies of the document are also available for review at the following City public libraries:

Newport Beach Public Library
Corona del Mar Branch
420 Marigold Ave.
Corona Del Mar, CA 92625

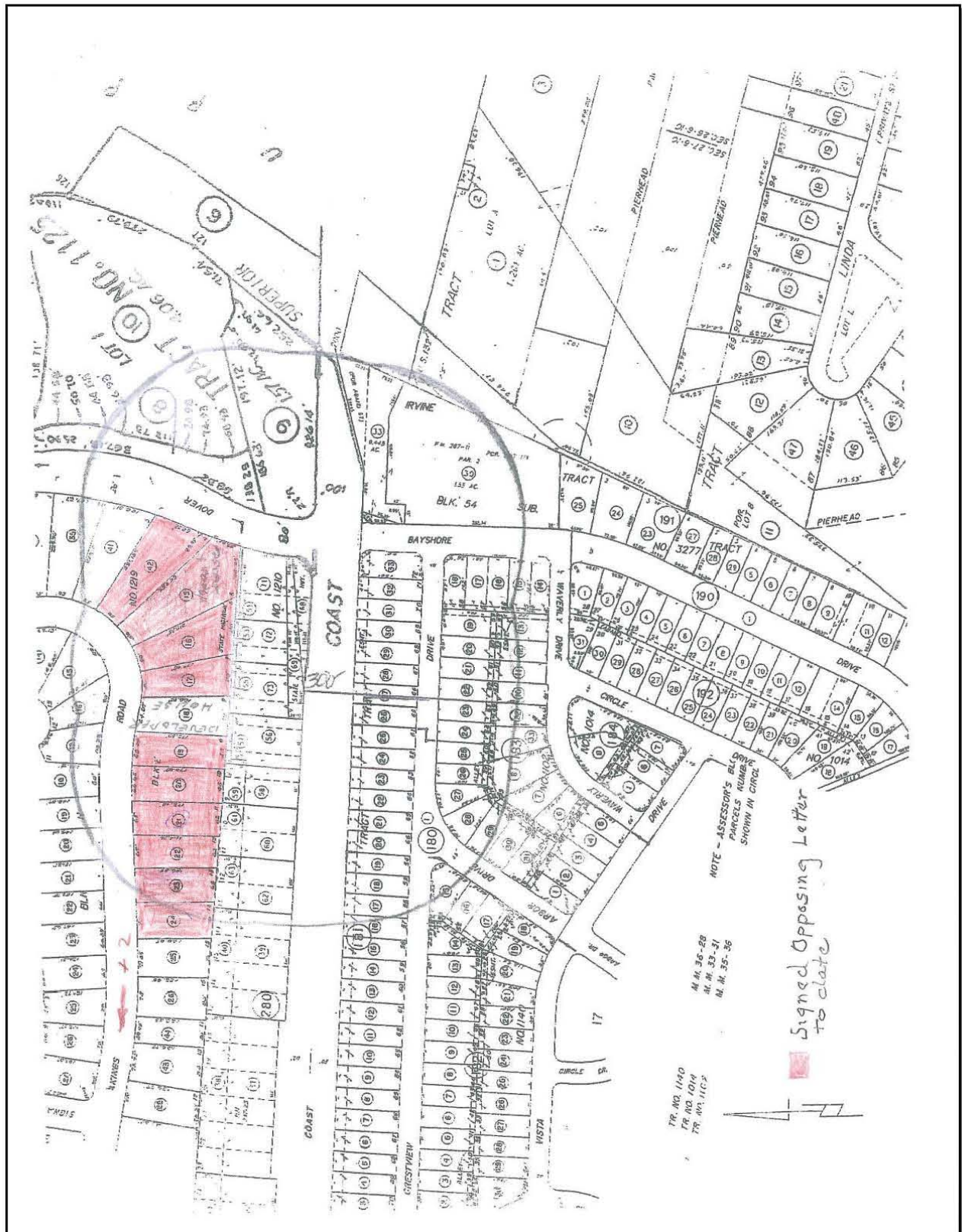
Newport Beach Public Library
Mariners Branch
1300 Irvine Avenue
Newport Beach, CA 92660

Newport Beach Public Library
Balboa Branch
100 East Balboa Boulevard
Newport Beach, CA 92660

Newport Beach Public Library
Central Library
1000 Avocado Avenue
Newport Beach, CA 92660



224



R1. Response to Comments Neighborhood Residents Letter, dated May 3, 2011.

R1-1 The commenter's opposition to the project as proposed is acknowledged. As described in the IS/MND project description, project implementation as proposed would require a General Plan Amendment to increase the floor area ratio (FAR), and a Site Development Review to exceed the building height limitation of 31 feet. The Aesthetics section of the IS/MND provides a description and graphic representation of the project as proposed, and concludes that the development would improve visual and aesthetic conditions of the site and surrounding area, and would not result in significant impacts. Subsequent to the preparation of the IS/MND, the applicant has revised the project reducing the heights of the proposed cupola and tower elements, and has added a roof structure over the rear two-thirds portion of the parking structure to screen the vehicles and associated activity from the residents above (See Section 2.0 of this Response to Comments document). Aesthetic impacts, including the scale of the project, are, however, subjective by nature. The discretionary power to either grant or deny the requested entitlements lies wholly with the City. These comments will be forwarded to decision makers for their consideration.

R1-2 As summarized in the previous response, the scale of the project requires a General Plan Amendment as requested by the project applicant to increase the allowable FAR for the project site. Similarly a Site Development Review is required for the building to exceed the 31 foot height limit. The discretionary power to either grant or deny the requested entitlements lies wholly with the City. These comments will be forwarded to decision makers for their consideration.

The original project design included uncovered rooftop parking, access and lighting. The impact analysis for uncovered rooftop related impacts are analyzed in IS/MND sections 3.1, *Aesthetics*, and 3.12, *Noise*, respectively. Figure 9, *Third-Level Parking Structure Lighting Plan*, shows the various types of lighting that would be installed on the parking structure's rooftop level. As shown and noted on the figure and as discussed in Section 3.1(d), the design, arrangement, and orientation of the lighting fixtures would prevent light spillover into the areas beyond the parking structure. Additionally, as shown in Figure 10, *Third-Level Parking Lighting Analysis*, the lighting fixtures would be directed inward to the parking structure. Therefore, lighting impacts were concluded to be less than significant in the IS/MND.

Potential rooftop parking noise was analyzed in Section 3.12(a). As shown in Figure 15, *3rd Level Parking Structure – Generated Noise Contours*, noise generated from the rooftop parking level would be less than the City's nighttime exterior noise standard of 45 dBA L_{eq} . Therefore, in accordance with the CEQA significance threshold, noise impacts from the parking structure were concluded to be less than significant.

Subsequent to the preparation of the IS/MND, the applicant has revised the project reducing to add a roof structure over the rear two-thirds portion of the parking structure to screen the vehicles and associated activity from the residents above, which would further minimize noise and lighting impacts. The environmental analysis and conclusions related to the proposed project modifications are included in Section 2.0 of this Response to Comments document.



3. Response to Comments

Regarding the commenter's concerns over potential traffic safety impacts, as discussed in Table 12, *General Plan Consistency Analysis*, of the IS/MND, the project would be consistent with policy CE 2.2.4, *Drive and Access Limitations*, of the City's General Plan. This policy states that driveways and local street access on arterials should be limited to maintain a desired quality of traffic flow and also that driveways should be consolidated wherever possible. The proposed project would eliminate the driveway access off of Dover Drive and would consolidate the four driveway accesses along West Coast Highway into two main access drives. The proposed plan and circulation has been reviewed by the City's traffic engineering department. The design, including ingress and egress to the parking structure meets City standards. The commenter is correct in noting that traffic going east on West Coast Highway would be required to make a U-turn at the West Coast Highway/Dover intersection. This turning movement has a dedicated left-turn light.

- R1-3 Please see response to comment R1-1 regarding commenter's concern that approval of the proposed project and granting of the requested entitlements would set an unwanted precedent. Regarding the commenter's concern that property values of homes above the project site may be affected, per CEQA Guidelines Section 15382, "an economic or social change by itself shall not be considered a significant effect on the environment" and therefore is outside the purview of CEQA. These comments will be forwarded to the appropriate decision makers for their consideration.

3. Response to Comments

LETTER R2 – Cameron Merage Letter (2 pages)

May 9, 2011

RECEIVED BY
PLANNING DEPARTMENT

Jaime Murillo, Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92658-8915

MAY 09 2011

CITY OF NEWPORT BEACH

Subject: Comments on the Initial Study
Mariner's Pointe, West Coast Highway at Dover Drive
Newport Beach, California

As the owner of the residential property adjacent to the subject development site, this letter is submitted to state my concerns and objections in reference to this development's potential impacts to my property. I purchased my property, 100 Kings Place, which is located immediately north of the subject commercial development site years ago for its high value in terms of location and view in hopes of building a residence that, similar to my neighbors' homes, would enjoy the panoramic views of Balboa Island, Lido Isle, and the Pacific Ocean. However, upon review of the plans and per the Initial Study dated April 2011, my family and I are extremely concerned that the value of our property and quality of life would be significantly impacted by the proposed project, due to the following reasons:

- | | |
|---|------|
| 1. Scenic View/Privacy: The height of the proposed two-story building and three-story parking structure, including the rotunda and cupola, would partly obstruct our views of Balboa Island, Lido Isle, and the Pacific Ocean. In addition, employees and customers parking, walking, and/or loitering on the rooftop parking structure would decrease the privacy of our backyard; | R2-1 |
| 2. Aesthetics/Lighting: The rooftop parking and lights rising above the parapet walls would create an unpleasant view, with sunlight reflecting in the day through the parked cars and lights installed above the parapet wall generating night time glare; | R2-2 |
| 3. Air Quality: The odor and fumes of food from the kitchen exhaust of two restaurants operating from 9:00AM to 1:00AM daily would constantly blow onto our property; | R2-3 |
| 4. Native Vegetation: Aside from its unpleasant aesthetic, this project will create a significant shadow over the rear end of our property, making it nearly impossible for native vegetation and ground cover to grow and would result in an unusable area; | R2-4 |
| 5. Zero Lot Variance: The developer proposes to encroach 5 feet into the 5-foot rear yard setback and build a retaining/shoring wall and 3-foot wide drainage swale on our property. Due to this we would lose 3' x 110' (330 Sq. Ft.) of our property. In addition, the retaining wall under-pining would extend about 40' to 50' into our property at 8' on center. This would limit the future development of our rear lot; and | R2-5 |
| 6. Noise: There will be an increase in noise for a prolonged period of time due to the proposed project's commercial/retail uses including restaurants operating from 9:00AM until 1:00AM. Noise will originate from the restaurants' kitchens, dining patios, and bar areas, with music playing overhead and patrons talking, laughing, and yelling, especially while alcohol is being served. In addition, the noise source would | R2-6 |



3. Response to Comments

be 5 feet closer to our property due to the the proposed zero lot variance. Also, with the addition of rooftop parking, cars would be driving approximately 26 feet higher than on PCH, and furthermore the 15' wide x 140' long mechanical area located on the north end of the proposed rooftop along our property line at 35' height would significantly elevate the noise level.

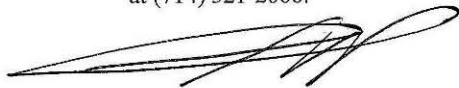
R2-6
cont'd.

As a good neighbor, I would like to offer the following suggestions:

1. The height of the building and parking structure shall be no taller than the permitted 31-foot base height limit, including any architectural features, as stated in the current zoning ordinance;
2. No roof top cars and associated structure lighting shall be exposed to the sky. A tiled roof over the parking structure (within the above stated height limit of 31') would be acceptable. This may reduce the noise, lighting, and privacy issues associated with parking as previously mentioned. Therefore, we request that the developer shall not receive a Conditional Use Permit to allow rooftop parking;
3. The restaurants' operation shall be limited to 10:00PM as most commercial businesses in the neighborhood close by then;
4. The retaining wall shall be built higher and include back fill to raise the grade to an appropriate level so the vegetation can grow to screen the noise and view of the structure and to prevent the ground cover vegetation from dying;
5. The structures shall not be built within the 5-foot rear yard setback; and
6. The current FAR of 0.3/0.5 for the project site as designated on the Zoning Map shall not be amended. This would decrease the number of cars and traffic congestion on and around the property.

R2-7

I appreciate your consideration of the above. If you have any questions, you can reach me at (714) 321-2668.



Cameron Mera, Owner
100 Kings Place
Newport Beach, CA 92663

3. Response to Comments

R2. Response to Comments Cameron Merae, Owner of 100 Kings Place, Newport Beach, California 92663, dated May 9, 2011.

R2-1 The commenter currently owns the property at 100 Kings Place and is concerned that development of the proposed project would partly obstruct views of Balboa Island, Lido Isle, and the Pacific Ocean. As shown on Figure 6a, Figure 6c, and Figure 7 of the IS/MND, the majority of the proposed buildings' rooftop lines including the rotunda and cupola would be below the top of the bluff. Subsequent to the preparation of the IS/MND, the applicant has proposed modifications to the project including the addition of a partial parking structure rooftop and height reductions in the cupola and tower elements (See Section 2.0 of this Response to Comments document). The proposed rooftop would screen the vehicles and associated activity from the residents above. Any encroachment into the commenter's view would be minor and likely limited to landscaping (tall trees). Moreover, the City of Newport Beach view protection policies are limited to public views. Private, residential views are not protected. As discussed in Section 3.1(a) of the IS/MND, the proposed project would not result in significant impacts on public views.

The commenter believes that the rooftop parking level would decrease the privacy of his backyard. As shown on Figure 6a, the top of the bluff is at 60 feet, and the maximum height of any part of the structure is 56 feet. Employees and customers of the project would not be able to view the commenter's property and privacy would not be affected. However, with the addition of the partial enclosure over the rear two-thirds portion of the rooftop parking, resident's view of activities in the parking structure would be screened.

R2-2 Lighting related to the previously proposed uncovered rooftop parking was discussed in Section 1.3.1 and analyzed in Section 3.1, *Aesthetics*, of the IS/MND. Figure 9, *Third-Level Parking Structure Lighting Plan*, shows the various types of lighting that would be installed on the rooftop level of the proposed parking structure. As shown and noted on the figure and as discussed in Section 3.1(d), the design, arrangement, and orientation of the lighting fixtures would prevent light spillover into the areas beyond the parking structure. Additionally, as shown in Figure 10, *Third-Level Parking Lighting Analysis*, the lighting fixtures would be directed inward to the parking structure and shielded from view above. Therefore, the IS/MND determined nighttime glare to be less than significant. Regarding sunlight reflecting off of the vehicles on the rooftop level parking, as noted in the previous response, the parking structure is below the top of the bluff. There would not be a direct line of sight from the property to the proposed rooftop level parking. Note also that the project has been revised to enclose the rear two-thirds portion of the rooftop parking that would further minimize potential impacts associated with parking on the top level of the structure.

R2-3 Comment acknowledged. As discussed in Section 3.3(e) of the IS/MND, the proposed project would not develop the type of the facility that would be considered to have objectionable odors (e.g., wastewater treatment plants, dairy farms, chemical manufacturing, etc.), and odor impacts were determined to be less than significant. In response to commenter concerns, however, the applicant is proposing, and the project has been conditioned, to install a pollution control unit



3. Response to Comments

that would filter odors generated from any restaurant kitchens. To report any future potential odor issues, the commenter should contact the South Coast Air Quality Management District (SCAQMD) at 1-800-288-7664.

R2-4 The proposed project would be built in an east/west orientation. The Commenter's property is directly north of the project site. As the path of the sun generally moves in an east to west direction, the slope face would still receive sunlight for portions of the day throughout the year.

R2-5 The swale is designed to capture runoff from the slope and help with slope stability. It is the applicant's preference to negotiate easements to accommodate minimal encroachments into adjacent properties as required to construct the retaining wall and facilitate site drainage. These improvements would ultimately require the approval of each adjacent property owners. If easements cannot be negotiated, alternative construction methods are feasible to avoid the encroachments.

R2-6 Any restaurants that operate within the proposed project would be mostly enclosed, which would attenuate interior-to-exterior noise transmission. The planned ground-floor outdoor patio areas along West Coast Highway and the patios along Dover Avenue would be shielded by the proposed commercial building. The outdoor patio areas would not have a direct line of sight to the northern residences above the project site, and the proposed commercial/retail building would provide noise attenuation. Operation of any uses at the project site would be subject to the City of Newport Beach noise ordinances and nuisance laws. Additionally, subsequent approval of a use permit will be required to permit the operation of any food uses within the project, at which time the specific operational characteristics, hours of operation, seating plans, etc, will be reviewed and conditioned.

The commenter is concerned that having the proposed project five feet closer in addition to rooftop parking and rooftop mechanical systems would significantly elevate noise. As shown in Figure 15, *3rd Level Parking Structure – Generated Noise Contours*, the noise from use of the rooftop parking level would be less than the City's nighttime exterior noise standard of 45 dBA L_{eq} . Therefore, the IS/MND determined lighting and noise impacts from the parking structure would be less than significant. Additionally, as discussed in section 3.12(a) of the IS/MND, all mechanical systems would be fully enclosed, any vents would be oriented toward the highway, and the systems would have to comply with Section 10.26.025 of the City's Municipal Code, which regulates noise. Therefore, noise impacts from mechanical systems were also determined to be less than significant. Although these impacts were determined to be less than significant in the IS/MND, the applicant has since designed a partial enclosure over the rear two-thirds portion of the rooftop parking that would further minimize impacts associated with the rooftop parking.

R2-7 See Comment R2-6. The commenter's suggestions have been noted and forwarded to decision-makers for consideration. As noted above, the applicant has designed a partial enclosure over the rear two-thirds portion of the rooftop parking level, which would reduce noise and lighting impacts from the rooftop parking level even further and shield the resident's view of activity within the parking structure.

3. Response to Comments

LETTER R3 – Jack M. Langson Letter (1 page)

From: [Jack Langson](#)
To: [Murillo, Jaime](#)
Subject: Mariner's Point draft MND
Date: Monday, May 09, 2011 5:56:42 PM

Mr. Murillo,

Thank you for the opportunity to comment on the draft Mitigated Negative Declaration for the Mariner's Point project. As I understand it, City Staff is taking public comment into consideration in determining whether to recommend the currently proposed project without further mitigation and without a full EIR.

R3-1

TRAFFIC IMPACT: It seems to me that the transportation/traffic impact has NOT been adequately mitigated to justify the requested scale of this project on such a small parcel. While the amount of traffic from this small parcel will be a tiny share of the traffic at this very busy intersection, I request that City Staff uphold the principle of adhering to the existing FAR specified in the General Plan regardless of the parcel size. Since there are 3 proposed building uses (i.e. restaurant, retail, and medical office), there apparently is no compelling need for the proposed exception to the General Plan specified FAR which will result in increased traffic at the site.

R3-2

BUILDING MASS: The requested variance in allowable building height from the 31' existing zoning to 40' (plus 44' at the architectural cupola) will introduce a new standard for buildings so close to the highway in our neighborhood. Again, I request that City Staff adhere to the exiting zoning regulations.

R3-3

PARKING STRUCTURE STALL COUNT: The parking structure has been "engineered" to the limit to meet the requested project size. There will definitely need to be a valet/garage traffic manager around whenever a delivery truck is parked on the ground floor given the tight turning radius of the driveway and the fact that the valet cannot take a car out to PCH to get back to the valet station due to wrong-way traffic flow. It will be interesting to see how the developer engineers the transition from the level parking stalls to the 15% grade on the ramp without scraping the bottoms of cars or encroaching on the level handicapped path of travel. Finally, counting "tandem" parking stalls as fully usable is optimistic. Hence, this awkward parking facility seems to need further review.

R3-4

Again, thank you for the opportunity to have my comments considered.

Cordially,

[Jack M. Langson](#), neighbor
2616 Bayshore Drive



3. Response to Comments

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3. Response to Comments

R3. Response to Comments Jack M. Langson, Owner of 2616 Bayshore Drive, Newport Beach, California, dated May 9, 2011.

R3-1 The commenter is correct. In accordance with CEQA Guidelines Section 15074 (b):

(b) Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis

R3-2 Based on the analysis included in the technical traffic study (IS/MND Appendix F) as summarized in Section 3.16(a), *Transportation/Traffic*, project-generated traffic in addition to forecast cumulative conditions would not significantly impact traffic. As shown in IS/MND Tables 23 and 24, area intersections would continue to operate at acceptable levels of service.

The commenter's request that the City uphold the existing FAR (not grant the General Plan Amendment) is acknowledged.

R3-3 As described in the IS/MND project description, project implementation as proposed would require a Site Development Review to exceed the building height limitation of 31 feet in addition to a General Plan Amendment to increase the floor area ratio (FAR). The Aesthetics section of the IS/MND provides a description and graphic representation of the project as proposed, and concludes that the development would improve visual and aesthetic conditions of the site and surrounding area, and would not result in significant impacts. Subsequent to the preparation of the IS/MND, the applicant has revised the project reducing the heights of the proposed cupola and tower elements, and has added a roof structure over the rear two-thirds portion of the parking structure to screen the vehicles and associated activity from the residents above (See Section 2.0 of this Response to Comments document). Aesthetic impacts, including the scale of the project, are, however, subjective by nature. The discretionary power to either grant or deny the requested entitlements lies wholly with the City. These comments will be forwarded to decision makers for their consideration.

R3-4 Delivery trucks would not be scheduled during the peak usage times of lunch and dinner. During peak usage, a valet/traffic director would be on the ground floor to direct traffic flow as necessary. Also, valet vehicles would not be taken onto West Coast Highway at any time. When returning vehicles to guests during daytime hours, two-way traffic flow would be maintained on Level 1 and vehicles would exit to the east. During the peak dinner hours, when there is one-way traffic flow on Level 1, vehicles would come down the ramp and be dropped off for guests in the spaces directly in front of the ramp so that traffic flow is maintained.



3. Response to Comments

Regarding the 15 percent grade of the ramps, the design of the ramp would comply with City's Parking Layout Standard STD-805-L-A and STD-805-L-B, which allow a maximum ramp slope of 15 percent. As shown on Figure 7, *Site Plan Cross-Section*, of the IS/MND, the first and last five feet of the parking structure ramps have an 11 percent slope.

All of the tandem stalls would be utilized either by valet or by employees. The valet service would maximize all parking spaces (single and tandem) as needed. The tandem parking stalls reserved for employees would be assigned to specific tenants, which would prevent a scenario where employees would not park in a tandem parking stall for fear they would be closed in.

3. Response to Comments

LETTER R4 – Mike Hilford Letter (1 page)

From: [mhilford](#)
To: [Murillo, Jaime](#)
cc: [Mike Hilford](#)
Subject: Mariner's Pointe Project Variances
Date: Tuesday, May 10, 2011 2:02:19 PM

I find no mention of the Mariner's Pointe Project at the suggested website:
<http://www.newportbeachca.gov/index.aspx?page=942> .

R4-1

Developers of the project, located at 100-300 PCH, have requested some code variances that includes building height & roof-top parking that will, if approved, set a precedent and standard for all PCH buildings in this area. It would be naive to believe that the variances, if allowed, will be limited to 100-300 PCH.

R4-2

For example, years ago, building height limits at 530 Kings Rd., were increased, or ignored, and now the street is lined with three & four story high-mega-houses that are incompatible with the neighborhood's scale.

Noise & commotion related to parking on these high structures, built in close proximity to many residences on Kings Rd., will negatively impact home-owner's quality of life and property values.

R4-3

Therefore, I recommend the requested variances be denied.

Thank you,

Mike Hilford
511 Kings. Rd.
949/548-1495



3. Response to Comments

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3. Response to Comments

R4. Response to Comments Mike Hilford, Owner of 511 Kings Road, Newport Beach, California, dated May 10, 2011.

- R4-1 The Mariner's Pointe Project IS/MND can be accessed through the following website address: <http://www.newportbeachca.gov/index.aspx?page=1347>. Upon receiving this comment letter, staff called Mr. Hilford to assist him with accessing the document on the City website.
- R4-2 The potential impacts for the proposed project, including requested entitlements have been analyzed in the IS/MND. The potential that granting such entitlements would set up a precedent is speculative and beyond the realm of environmental documentation for the project under the California Environmental Quality Act. The commenter's concerns are acknowledged, however, and will be forwarded to the appropriate City decision makers for their consideration.
- R4-3 Noise related to the previously proposed uncovered rooftop parking was discussed in Section 3.12, *Noise*, of the IS/MND. As shown in Figure 15, *3rd Level Parking Structure – Generated Noise Contours*, the noise contours generated from use of the rooftop parking would be less than the City's nighttime exterior noise standard of 45 dBA L_{eq} . Therefore, the IS/MND determined that noise impacts from the parking structure would be less than significant. However, subsequent to the preparation of the IS/MND, the applicant has revised the project by adding a roof structure over the rear two-thirds portion of the parking structure to screen the vehicles and associated activity from the residents above (See Section 2.0 of this Response to Comments document), which would further minimize noise.

Regarding the commenter's concern that property values of homes above the project site may be affected, per CEQA Guidelines Section 15382, "an economic or social change by itself shall not be considered a significant effect on the environment" and therefore is outside the purview of CEQA. These comments will be forwarded to the appropriate City decision makers for their consideration.



3. Response to Comments

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3. Response to Comments

LETTER R5 – William L. Steel Letter (4 pages)

Scott R. Albrecht
Stephen S. Chang*
Loren A. Deters
Matthew A. Goldstein**
Philip W. Green
Jeffrey S. Grider
Megan G. Mayer
Jeanne V. McKee
Jennifer A. Needs
Anat Pieter
Herbert N. Samuels***
Hugh A. Sanders
William L. Steel
Martin J. Stein



Of Counsel
Orlando F. Cabanday
Ernest Mooney

*Also admitted in Colorado
**Also admitted in Arizona
***Also admitted in New York and Florida

May 11, 2011

File No.: 5657-001

VIA EMAIL JMurillo@newportbeachca.gov
Jaime Murillo, Associate Planner
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658

RE: Notice of Intent to Adopt Mitigated Negative Declaration
for Mariner's Pointe Project

Dear Mr. Murillo:

This law firm represents Laura Tarbox, Trustee of the Frank A. Eisendrath Trust, the owner of the home at 104 Kings Place, Newport Beach ("Home"). The Home is located directly above the proposed project. The owner believes the proposed project will have a significant impact on the environment and that the proposed Mitigated Negative Declaration ("MND") is insufficient and flawed in many respects.

The owner acknowledges the Home is located adjacent to a commercial zone and that development of the subject property for commercial uses is appropriate. However, the owner believes the proposed project is too massive for the subject property and that the requested amendments to the General Plan, Zoning Code, height limits and encroachment restrictions should not be granted.

The owner's principal environmental concerns are as follows:

1. Noise.

a. Rooftop Open-Air Parking Lot. The MND at Section 3.12 admits that noise will emanate from proposed rooftop open-air parking lot from slamming doors, car alarms and beeps, horns, loud talking, etc., but the MND offers no mitigating solutions other than a statement that only autos of employees and that are valet parked will be allowed on that level, which is no solution at all because all of the same noise issues are likely to occur even with that

R5-1

19800 MacArthur Boulevard • Suite 1000 • Irvine, CA 92612-2433
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Jaime Murillo, Associate Planner
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restriction. Also, Section 3.12 says that there are only 20 rooftop parking spaces but the plans show 47 spaces. The owner also does not believe the applicant will limit rooftop parking only to employees and valet parking. The applicant's representative, Tod Ridgeway, told the owner and me yesterday that the applicant proposes at least two alcohol serving restaurants, at least one of which will only be accessible from the rooftop parking level. It seems unlikely patrons of such a restaurant would tolerate not being allowed to park on the same level as the restaurant's entry. The proposal for open-air parking for patrons of alcohol serving restaurants located below many residences is already in practice with disastrous consequences in Crystal Cove. The exiting patrons of Javier's and Maestro's restaurants and their cars are extremely loud and insensitive to the adjacent homes, and most if not all of those homeowners hate living there.

The owner requests that the City not allow open-air rooftop parking, and that if rooftop parking is allowed that the City require it to be totally covered with appropriate noise attenuation material, and that a gate system or other access barrier be required as a condition to restaurant use that allows access to the rooftop level only by valet parking attendants and employees.

R5-1
cont'd.

b. Restaurant Outdoor Seating Areas. The applicant's plans currently call for outdoor restaurant seating areas on the east side of the project on both the ground level and the second level, directly below the Home. The likely noise from those areas is not addressed in the MND. The owner requests that the City not allow any outdoor restaurant seating areas, and that if such seating is allowed that the City restrict the hours of access to those areas to prevent their use after 10 pm, require screening walls or other appropriate noise attenuation solutions, and prohibit any music (live or otherwise) or other amplified noise within these areas.

2. Odors.

a. Food. The applicant intends to have at least two restaurants in the project, which will require cooking facilities with appropriate rooftop ventilation. The food odors appear likely to rise directly into the residential area including the Home. The MND is silent about the likelihood of food odors emanating from the restaurants and therefore offers no mitigating solutions. The owner requests that the City require the applicant to prevent food odors from emanating into the residential area as a condition to restaurant use.

b. Cigarettes and Cigars. The applicant intends to have at least two alcohol-serving restaurants, one on each level, and both of which have proposed outdoor seating areas. It can be expected that a significant number of patrons of these restaurants will be smokers, but the MND is silent about the likelihood of cigarette and cigar smoke and odors emanating from the project, including from the outdoor seating areas, the areas between the proposed elevator and the restaurant entrances, and the proposed open-air rooftop parking lot, and therefore offers no mitigating solutions. The owner requests that the City prohibit cigarette and cigar smoking everywhere within and around the project, including without limitation in any outdoor seating areas, walkways and parking areas.

R5-2

3. Response to Comments

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3. Light Pollution. The applicant's plans provide for many lights in the rooftop open-air parking area and glass elevator area that will be located within the parking area's southern and western boundary walls, which will be shining in the Home's direction and therefore can reasonably be expected to have a material adverse impact on the Home's nighttime environment. The owner requests that the City require the top level of parking be covered to prevent such glare and if the City does not require such cover that the City require lighting that will not be shining in the Home's direction or will shine in that direction with minimal glare.

R5-3

4. Views.

a. Project's Rooftop. The Home will look down directly onto the commercial structure's rooftop. Therefore, to minimize view degradation from the Home the owner requests that the City prohibit the placement of any vents, heating and air conditioning equipment, or similar fixtures or equipment on the roof and that the City require appropriate roofing materials.

b. Cupola. The proposed cupola will be the highest point of the structure and will be about 44 feet above the ground level (not including its proposed spire, which may extend several feet above that). This requires a modification permit because it will be located above the maximum allowable height. While it does not appear that the cupola will block the Home's view of Newport Bay, it will be the most visible part of the commercial building from the Home and the spire may interfere with the Home's view of Newport Bay. Therefore, the owner requests that the City not approve a modification permit and instead require that any cupola including its spire be built within the 40 foot maximum height limit.

R5-4

c. Landscaping. The applicant's renderings of the project in the MND show about 10 proposed palm trees in the front of the project along Coast Highway, all of which are shown as extending substantially above the highest points of the proposed buildings. The owner believes that the height of these palm trees as shown in the drawing will extend into the Home's view corridor of the Newport Bay and ocean, and therefore the owner requests that the City require all landscaping within the project to at no time be higher than any of the buildings within the project.

In addition to the owner's environmental concerns, the owner has these aesthetic objections:

1. Rear Wall. The applicant's representative Tod Ridgeway indicated to the owner and me yesterday that the northern boundary of the project, which will be facing the Home, will be a long and very high solid block wall (which will be over 300 feet long and about 30 feet tall. The massiveness of this wall will be very unattractive in appearance from the Home and neighboring homes, and the Owner requests that the City require that the side of this wall facing the Home have an attractive design or other covering, and/or that the applicant be required to

R5-5



3. Response to Comments

Jaime Murillo, Associate Planner
City of Newport Beach
May 11, 2011
Page 4

place tall landscaping between the wall and the Home within the applicant's property (and not within the owner's property).

R5-5
cont'd.

2. Privacy. The applicant proposes two outdoor restaurant seating areas on the east side of the project, both of which will be located directly below the home. In addition, the rooftop elevator's doors will open directly toward the Home. It appears likely that patrons in those areas will be able to look directly into the owner's rear yard and into the Home's proposed second floor. The owner requests that the City require appropriate view screening from the outdoor seating areas and from the elevator access area so that patrons cannot see into the Home's proposed second floor or its rear yard.

R5-6

3. Overall Mass. The overall mass of the project appears to the owner to be too large for the available space and will be very out of character with existing commercial uses in the area and as will have too many negative impacts on the Home and adjacent homes.

R5-7

Lastly, the owner believes the project as proposed will only be possible if the applicant is able to use adjacent property, including the owner's property and property owned by adjacent homeowners, because it appears the proposed project may require encroachments into the owner's property for retaining wall footings and/or tiebacks, drainage swales and/or landscaping. The owner does not intend to grant to the applicant any easements or other rights to use the owner's property for any purpose, and the owner therefore requests that the City require the project to be located entirely within the applicant's property and that no physical encroachments occur within any adjoining properties.

R5-8

Sincerely,



William L. Steel

WLS:kl
cc: Client
5657001\j. murillo ltr 5-11-11.docx

3. Response to Comments

R5. Response to comments by William L. Steel, Attorney, SG&S Lawyers, on behalf of Laura Tarbox, owner of 104 Kings Place, Newport Beach, California, dated May 11, 2011.

R5-1 As analyzed in Section 3.12(a) of the IS/MND, noise impacts from the rooftop level parking lot was determined to be less than significant. Therefore, per CEQA, incorporation of mitigation is not required. The commenter's assertion that Section 3.12 of the IS/MND states there are only 20 rooftop parking spaces is incorrect. There is no reference to the exact page, but on page 113, the "20 spaces" is in reference to the existing offsite parking lot that would be utilized as an employee overflow lot.

Regarding potential noise issues from patrons accessing the rooftop level parking, these parking spaces would be marked "employee only." Additionally, valet service would begin at 10:00 AM until closing of all businesses, thus preventing patrons from parking on the rooftop level, which would minimize potential noise issues. Furthermore, the project has been revised to include a partial enclosure for the rear two-thirds of the rooftop parking, which would further minimize noise. Comments regarding the circumstances at the other restaurant establishments are acknowledged and will be forwarded to the appropriate City decision makers for their consideration.

Regarding noise from the proposed outdoor seating areas, the planned ground-floor outdoor patio areas along West Coast Highway and the patios along Dover Avenue would be shielded by the proposed commercial building and would be consistent with the commenter's suggestion of requiring screening walls. The outdoor patio areas would not have a direct line of sight to the northern residences above the project site, and the proposed commercial/retail building would provide noise attenuation. Furthermore, noise associated with the operation of the project is regulated through the City's Municipal Codes. These Codes include Chapter 10.26, Community Noise Control and Chapter 10.28.010, Loud and Unreasonable Noise. Project occupants and patrons would be required to comply with these municipal code limits, which would minimize noise generated by the proposed project to a level considered acceptable by the City, and consequently would not result in a significant noise impact. Additionally, subsequent approval of a use permit will be required to permit the operation of any food uses within the project, at which time the specific operational characteristics, hours of operation, seating plans, etc, will be reviewed and conditioned.

R5-2 As discussed in IS/MND Section 3.3(e), the proposed project would not be the type of the facility considered to have potentially significant objectionable odors (e.g., wastewater treatment plants, dairy farms, chemical manufacturing, etc.). Potential project-related odor impacts were therefore determined to be less than significant in the IS/MND. Moreover, the potential odor from patrons smoking in the outdoor patio areas would not meet the SCAQMD Rule 402 Nuisance threshold as reproduced in the IS/MND, page 64. Smoke odors would be anticipated to dissipate due to the horizontal and vertical separation between the project and residences at the top of bluff. Potential project-related odor impacts were therefore determined to be less than significant in the IS/MND.



3. Response to Comments

The applicant is also proposing, and the project has been conditioned to require, the installation of a pollution control units to filter odors generated from any restaurant kitchens. To report any future potential odor issues, the commenter should contact the South Coast Air Quality Management District (SCAQMD) at 1-800-288-7664.

R5-3 Lighting related to the previously proposed uncovered rooftop parking was discussed in Section 1.3.1 and analyzed in Section 3.1, *Aesthetics*, of the IS/MND. Figure 9, *Third-Level Parking Structure Lighting Plan*, shows the various types of lighting that would be installed on the rooftop level of the proposed parking structure. As shown and noted on the figure and as discussed in Section 3.1(d), the design, arrangement, and orientation of the lighting fixtures would prevent light spillover into the areas beyond the parking structure. Additionally, as shown in Figure 10, *Third-Level Parking Lighting Analysis*, the lighting fixtures would be directed inward to the parking structure and shielded from view above. Therefore, the IS/MND determined nighttime glare to be less than significant. Note also that the project has been redesigned to enclose the rear two-thirds portion of the rooftop parking that would further minimize potential impacts associated with parking on the top level of the structure (See Section 2.0 of this Response to Comments document).

R5-4 Mechanical systems would be within enclosures that would be designed to be consistent with the architectural theme and style of the rest of the project. The project has been designed to be within the design guidelines of the City Zoning Code, General Plan, and Mariner's Mile Strategic Vision and Design Framework and would be reviewed by the City's Planning Commission for consistency and compliance.

Regarding the comment on the cupola and spire features and the planned palm trees along West Coast Highway, as shown on Figure 6a, Figure 6c, and Figure 7 of the IS/MND, the majority of the proposed buildings' rooftop lines including the cupola would be below the top of the bluff as noted by commenter. Any encroachment into the commenter's view would be extremely minor, and likely limited to landscaping (tall trees). Subsequent to the preparation of the IS/MND, the project applicant has revised the project design reducing the height of the cupola and tower by 4 feet, and thus eliminating the need for the Modification Permit (See Section 2.0 of this Response to Comments document). Moreover, the City of Newport Beach view protection policies are limited to public views. Private, residential views are not protected. As discussed in Section 3.1(a) of the IS/MND, the proposed project would not result in significant impacts on public views.

R5-5 The project has been designed to be within the design guidelines of the City Zoning Code, General Plan, and Mariner's Mile Strategic Vision and Design Framework and would be reviewed by the City's Planning Commission for consistency and compliance. This comment will be forwarded to the appropriate City decision makers for their consideration.

R5-6 As shown Figure 6a, Figure 6c, and Figure 7 of the IS/MND, while it may be possible for a person to have an unobstructed view of the face of the bluff from the rooftop

3. Response to Comments

level of the parking structure, that person would not be able to see onto the plateau. Additionally, the project applicant has revised the design to include a partial enclosure over the rear two-thirds portion of the rooftop parking that would minimize the resident's view of activities in the parking structure.

The planned ground-floor outdoor patio areas along West Coast Highway and the patios along Dover Avenue would be shielded by the proposed commercial building. Therefore, the outdoor patio areas would not have a direct line of sight to the northern residences above the project site.

R5-7 As described in the IS/MND project description, project implementation as proposed would require a General Plan Amendment to increase the floor area ratio (FAR), a Site Development Review to exceed the building height limitation of 31 feet. Subsequent to the preparation of the IS/MND, the applicant has revised the project reducing the heights of the proposed cupola and tower elements, and has added a roof structure over the rear two-thirds portion of the parking structure to screen the vehicles and associated activity from the residents above. The Aesthetics section of the IS/MND provides a description and graphic representation of the project as proposed, and concludes that the development would improve visual and aesthetic conditions of the site and surrounding area, and would not result in significant impacts. Aesthetic impacts, including the scale of the project, are, however, subjective by nature. The discretionary power to either grant or deny the requested entitlements lies wholly with the City. These comments will be forwarded to decision makers for their consideration.

R5-8 It is the applicant's preference to negotiate easements to accommodate minimal encroachments into adjacent properties as required to construct the retaining wall and facilitate site drainage. These improvements would ultimately require the approval of each adjacent property owners. If easements cannot be negotiated, alternative construction methods are feasible to avoid the encroachments.



3. Response to Comments

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